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No. 95-1789

Supreme Court, U.S.  
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In The  
**Supreme Court of the United States**  
October Term, 1995

CALVIN GREGORY, an individual; and  
DOES 1 through 50, inclusive,  
*Petitioners,*  
vs.

JOSE R. FLORES and GENIE FLORES,  
individually and as husband and wife,  
*Respondents.*

**On Petition For Writ Of Certiorari  
To The Supreme Court Of California**

**REPLY BRIEF**

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**BRIEF IN REPLY TO OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI**

**I.**

**INTRODUCTION**

As Mr. Justice Rutledge put it in *Thomas v. Collins*, 323 U.S. 516 (1945) at page 530,

The usual presumption supporting legislation is balanced by the indispensable democratic freedoms secured by the First Amendment. The priority give these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the *character of the right*, not the limitation, that determines what standard governs. (emphasis added.)<sup>1</sup>

The right at issue in this appeal is petitioner's right to petition his government for redress. The trial court places significant limitations on petitioner's ability to utilize his local court and communicate with local government officials. As a result, the injunction must be considered a prior restraint.

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<sup>1</sup> Respondents arguments miss the mark. Petitioner's appeal concerns only the constitutionality of the trial court's injunction and the inability to determine whether the jury's verdict was based on the exercise of constitutionally protected rights.

## II.

**THE TRIAL COURT'S INJUNCTION CONSTITUTES  
AN UNCONSTITUTIONAL PRIOR RESTRAINT**

Justice Blackman in *CBS, Inc. v. Davis*, 114 S.Ct. 912 at page 914 (1994) citing this court's decision in *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976) stated:

A criminal penalty or a judgment in a defamation case is subject to the whole panoply of protections afforded by deferring the impact of the judgment until all avenues of appellate review have been exhausted . . . A prior restraint, by contrast, . . . has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for a time.

The danger of censorship in advance is that in attempting to prevent the commission of forbidden acts in advance, it will also prevent lawful exercise of First Amendment rights upon an erroneous (even plausible) finding in advance that the applicant intends to engage in unlawful conduct.<sup>2</sup> (See *American Civil Liberties Union v. Board of Education*, 55 C.2d 167, 179-180 (1961).)

<sup>2</sup> Respondents attempt to sabotage the petition by stating irrelevant facts intended to undermine petitioner's character. It is, however, the character of the right that is important. (See *Thomas v. Collis*, *supra*, 323 U.S. at 530.) Respondents fail to acknowledge that they settled a cross-complaint filed by petitioner alleging that respondents committed 2 misdemeanors and a felony. As a condition of settlement, respondents signed a stipulation severely restricting their exercise of dubious behavior.

The trial court, anticipating that petitioner would engage in unlawful acts, has severely limited his ability to petition his local court and local government officials leaving petitioner an outsider to the legal process and forcing him to take the law into his own hands. This type of prior restraint is inconsistent with the founding fathers' intent in establishing the First Amendment and this court's long standing protection of said rights.

Petitioner recognizes that this case comes to the court with unorthodox facts. However, the federal courts have considered First Amendments rights so precious that the protections do not depend upon the notoriety of the issues (*Garrett v. Estelle*, Tex. 556 F.2d 1274 (C.A. 5 1977)) and are not limited to issues of great social and political impact. (*Jannetta v. Cole*, 493 F.2d 1334 (C.A. 4 1974))

## III.

**THE TRIAL COURT JUDGMENT MAY HAVE  
BEEN BASED ON CONSTITUTIONALLY  
PROTECTED ACTIONS**

Respondents alleged and argued to the jury that it should award damages on the basis of actions that were constitutionally protected. A general verdict was returned. As a result, the great possibility exists that the verdict was unconstitutional as it was based on constitutionally protected actions.



## IV.

## CONCLUSION

The issues come before this court in an unusual fashion, but are nevertheless important. The exercise of First Amendment rights are cherished in this country and define the difference between this great country and the rest of the world. Petitioner respectfully requests that this court grant his petition. Thank you.

Respectfully submitted,

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